



DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Swiss-U.S. Privacy Shield; Invitation for Applications for Inclusion on the Supplemental List of Arbitrators

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at PRAComments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Ritchie, International Trade Administration, 202-482-4936 or david.ritchie@trade.gov. More information on the arbitration mechanism may be found at <https://www.trade.gov/td/services/odsi/swiss-us-privacysshield-framework.pdf>.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Swiss-U.S. Privacy Shield Framework was designed by the U.S. Department of Commerce (DOC) and the Swiss Administration (Swiss) to provide companies in both Switzerland and the United States with a mechanism to comply with data protection requirements when transferring personal data from Switzerland to the United States in support of transatlantic commerce. On January 12, 2017, the Swiss deemed the Swiss-U.S. Privacy Shield Framework (Swiss Privacy Shield) adequate to enable data transfers under Swiss law, and on April 12, 2017, the DOC began accepting self-certifications from U.S. companies to join the program (82 FR 16375; April 12, 2017). For more information on the Privacy Shield, visit www.privacyshield.gov.

As described in Annex I of the Swiss Privacy Shield, the DOC and the Swiss committed to implement an arbitration mechanism to provide Swiss individuals with the ability to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Privacy Shield. Organizations voluntarily self-certify to the Swiss Privacy Shield and, upon certification, the commitments the organization has made to comply with the Swiss Privacy Shield become legally enforceable under U.S. law. Organizations that self-certify to the Swiss Privacy Shield commit to binding arbitration of residual claims if the individual chooses to exercise that option. Under the arbitration option, a Privacy Shield Panel^a (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-

^a The Privacy Shield Panel would govern arbitration proceedings brought under either the Swiss-U.S. or EU-U.S. Privacy Shield Frameworks.

specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Swiss Privacy Shield only with respect to the individual. The parties will select the arbitrators from the list of arbitrators described below.

The DOC and the Swiss Administration are developing a list of up to five arbitrators to supplement the list of arbitrators developed under the EU-U.S. Privacy Shield Framework. To be eligible for inclusion on the supplemental list, applicants must be admitted to practice law in the United States and have expertise in both U.S. privacy law and European or Swiss data protection law. Applicants shall not be subject to any instructions from, or be affiliated with, any Privacy Shield organization, or the U.S., Switzerland, EU, or any EU Member State or any other governmental authority, public authority or enforcement authority.

The DOC received emergency approval for this information collection on March 26, 2018 under Control Number 0625-0278. Upon receiving that approval, the DOC accepted applications submitted by April 30, 2018 for inclusion on the Supplemental List of Arbitrators. The DOC is currently evaluating applicants who submitted by April 30, 2018 and is thus not currently seeking additional applications. However, the DOC is now submitting a request for a 3-year approval through OMB's general PRA clearance process, because it may seek additional applications in the future as appropriate.

To be considered for inclusion on the Supplemental List of Arbitrators, eligible individuals are evaluated on the basis of independence, integrity, and expertise:

Independence:

Freedom from bias and prejudice.

Integrity:

Held in the highest regard by peers for integrity, fairness and good judgment.

Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise:

Required:

Admission to practice law in the United States.

Level of demonstrated expertise in U.S. privacy law and European or Swiss data protection law.

Other expertise that may be considered includes any of the following:

Relevant educational degrees and professional licenses.

Relevant professional or academic experience or legal practice.

Relevant training or experience in arbitration or other forms of dispute resolution.

Evaluation of applications for inclusion on the list of arbitrators is undertaken by the DOC and the Swiss Administration. Selected applicants remain on the list for a period of 3 years, absent exceptional circumstances, change in eligibility, or for cause, renewable for one additional period of 3 years.

The DOC selected the International Centre for Dispute Resolution-American Arbitration Association (ICDR-AAA) as administrator for Privacy Shield arbitrations brought under either the Swiss-U.S. or EU-U.S. Privacy Shield Frameworks.^b Among other things, the ICDR-AAA

^b For more information about the selection process and the role of the administrator, see <https://www.privacyshield.gov/Arbitration-Fact-Sheet>

facilitates arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses. Arbitrators are expected to commit their time and effort when included on the supplemental Swiss-U.S. Privacy Shield List of Arbitrators and to take reasonable steps to minimize the costs or fees of the arbitration.

Arbitrators are subject to a code of conduct consistent with Annex I of the Swiss-U.S. Privacy Shield Framework and generally accepted ethical standards for arbitrators. The DOC and the Swiss Administration agreed to adopt the arbitral procedures adopted under the EU-U.S. Privacy Shield Framework to govern the arbitral proceedings, subject to considerations identified in Annex I of the Swiss-U.S. Privacy Shield Framework, including that materials submitted to arbitrators will be treated confidentially and will only be used in connection with the arbitration. For more information, please visit <https://www.privacyshield.gov/article?id=G-Arbitration-Procedures> where you can find information on the arbitration procedures. (Please note that the Arbitration procedures apply to both the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework.)

Applications

Applications must be typewritten and should be headed “Application for Inclusion on the Swiss-U.S. Privacy Shield Supplemental List of Arbitrators.” Applications should include the following information, and each section of the application should be numbered as indicated:

—Name of applicant.

— Address, telephone number, and email address.

1. Independence

—Description of the applicant's affiliations with any organization that has self-certified under either the Swiss-U.S. or EU-U.S. Privacy Shield Frameworks, or the U.S., Switzerland, any EU Member State or any other governmental authority, public authority, or enforcement authority.

2. Integrity

— On a separate page, the names, addresses, telephone, and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, and judgment.

—Description of the applicant's willingness and ability to make time commitments necessary to be an arbitrator.

3. Expertise

—Demonstration of admittance to practice law in the United States.

—Relevant academic degrees and professional training and licensing.

—Current employment, including title, description of responsibility, name and address of employer, and name and telephone number of supervisor or other reference.

—Employment history, including the dates and addresses of each prior position and a summary of responsibilities.

—Description of expertise in U.S. privacy law and European or Swiss data protection law.

—Description of training or experience in arbitration or other forms of dispute resolution, if applicable.

—A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and European or Swiss data protection law, with copies appended.

II. Method of Collection

As stated above, the DOC is not currently seeking additional applications, but may do so in the future as appropriate. OMB reviewed and approved this information collection on an emergency basis as of March 26, 2018 under Control Number 0625-0278. As the emergency approval is only valid for 180 days, the DOC is now submitting a request for a 3-year approval through OMB's full PRA clearance process. Future applications would be submitted to the U.S. Department of Commerce, either by email or by fax. More information on the arbitration mechanism may be found at <https://www.trade.gov/td/services/odsi/swiss-us-privacyshield-framework.pdf>.

III. Data

OMB Control Number: 0625-0278.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Private Individuals.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 240 minutes.

Estimated Total Annual Burden Hours: 80.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer,

Office of the Chief Information Officer.

Billing Code: 3510-DR-P

[FR Doc. 2018-15927 Filed: 7/24/2018 8:45 am; Publication Date: 7/25/2018]